ers of the injured ship had definitely decided to dry dock her for their purposes, or if it were necessary so to do, then by the dry docking at the defendant's expense they have really been saved an expenditure which they otherwise would have incurred. The question then is whether such dry docking is the proximate result of the collision. If it is, then there should be a reduction, the damages being the expense of restoring the ship to its former condition. See 2 SEDG., DAM., 8th ed., § 592. No allowance is made for new materials put in place of old materials in the course of such repairs, nor for an increase in the value of the ship by reason of the repairs. *The Baltimore*, 8 Wall. (U. S.) 377, 385; *The Pactolus*, Swab. 173. Nor is there any reduction by reason of the fact that some of the repairs made would shortly have been necessary to enable the ship to pass her classification survey. *The Bernina*, 55 L. T. R. 781. In view of the reluctance of the courts to allow a reduction for benefits, as illustrated by the results reached in the decisions cited above, it may be doubted whether the dry docking would be considered a proximate result of the collision and the reduction allowed. But whichever view may be preferable, the result in the principal case is sound. It does not appear that the dry docking was necessary or had been definitely determined upon by the owners of the injured ship, and as it cannot be said that they were saved an expense which they would otherwise have incurred, no definite benefit can be pointed out.

INSURABLE INTEREST. — Courts and text-writers have for many years said that the insured must possess an "insurable interest" in the subject-matter of an insurance policy but this term has rarely been precisely defined. See *Lucena* v. *Craufurd*, 2 Bos. & Pul. N. R. 269. It has frequently been held that the interest need be neither an equitable nor a legal right or liability. *Cf. Sun Ins. Office* v. *Merz*, 64 N. J. Law 301; *Boston Ins. Co.* v. *Globe Fire Ins. Co.*, 174 Mass. 229. A recent text-book states that "such an interest that pecuniary loss will result to the assured from the destruction of the property" is sufficient. MAY, INS., 4th ed., § 72, note. The vagueness of the term may proceed from confused ideas as to the purpose of the requirement. Although exact statements of this purpose are hardly to be found in the books, it seems to have been usually conceived either as the prevention of wagering policies or as the limitation of the amount recoverable to the damages suffered. It is believed, however, that neither the character of the insurance policy as a wager, nor the measure of damages depends upon the relation between the insured and the subject-matter of the policy.

At present, either by decision or by statute, wagers are illegal in probably all common law jurisdictions. Hence those insurance policies which are mere wagers are void. See *Loomis* v. *Eagle, etc., Co.*, 6 Gray (Mass.) 396; *Trenton, etc., Co.* v. *Johnson*, 24 N. J. Law 576. Although in wagering contracts, as in insurance contracts, performance by one party is conditioned on contingencies more or less beyond the control of either party, yet the wagerer hopes to gain from his contract, the insured only to make himself whole. The difference lies solely in the intentions of the parties. Furthermore, partly, perhaps, as an approximation of the real intentions of the parties, partly as a judicial invention, the rule has become firmly established that the insurance contract is one of indem-

nity only. From this rule it follows that the insured can in no case recover more than the actual damages that would have been sustained, had the contract not existed. It is to be noted that the prohibition against wagers invalidates the contract *ab initio*, while the rule that the insurance contract is one of indemnity assumes a valid contract and relates merely to the damages to be recovered. It may be that the statement, that an insurable interest is necessary to a valid policy, is but an abridged and inexact expression of the two rules stated. Possibly, however, the requirement creates a further limitation upon insurance contracts.

Insurance provides a means whereby losses of various kinds, otherwise borne primarily by individuals, are distributed among the community at large. If the chance that loss may come to an individual on the happening of a certain event be very remote, then, even although insurance against the possible loss be not a wager, and although there could be no recovery upon the contract by the insured unless loss occurred to him, yet public policy may demand that no such insurance contract be made. To require that the insured stand in a certain relation to the subject-matter of the contract is in effect limiting, in the direction just stated, the kinds of losses that may be insured against. It may well be thought that public policy does not require a limitation of this sort.

In a case lately decided in Colorado the doctrine of insurable interest was involved. One in possession of land but not claiming title, insured buildings thereon under a *bona fide* belief that he owned them. The court allowed recovery on the policy for an amount not stated. *American, etc., Co.* v. *Donlon*, 66 Pac. Rep. 249. As the insured did not intend to make a wager the policy was rightly held valid. *Cf. Marks* v. *Hamilton*, 7 Ex. 323; but see *Sweeny* v. *Franklin Fire Ins. Co.*, 20 Pa. St. 337. The measure of damages should have been the actual loss occasioned to the insured by the destruction of the buildings.

Accrual of Cause of Action for Failure of Surface Support. — The question whether the owner of the surface of land acquires a right of action against the owner of the subjacent strata at the moment the latter removes the support, or only when the actual subsidence of the surface occurs, has not arisen often in America. In England it has come before the courts with some frequency, and it has there been decided by a unanimous opinion of the House of Lords that the Statute of Limitations begins to run not from the time of the excavating, but from that of the cave-in. *Backhouse* v. *Bonomi*, 9 H. L. Cas. 503. While few American cases raise the precise point many courts evidently regard the English doctrine as the settled rule. See *Smith* v. *Seattle*, 18 Wash. 484.

A discussion of this point in a recent Pennsylvania case consequently arouses interest when it appears that the court takes a directly contrary position and holds that the Statute runs from the date of the mining. *Noonan* v. *Pardee*, 50 Atl. Rep. 255. While acknowledging the final decision of *Backhouse* v. *Bonomi*, *supra*, the court regards it as being ill adapted to the conditions of coal mining in America. The court argues that since the plaintiff in the principal case knew that mines existed below his land, and since he had a right to investigate, and see that proper support had been left, his right of action arose when the mine